JINNY DANIUL

v.

PP

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
CHEW SOO HO J
[CRIMINAL APPEAL NO: BKI-42A-AC-2/1-2013]
7 MARCH 2013

CRIMINAL LAW: *Corruption - Corruptly receiving gratification - Court staff charged with receiving gratification - Whether ingredients of principal charge proved - Whether presumption under s. 50(1) Malaysian Anti-Corruption Commission Act 2009 correctly invoked - Whether presumption rebutted - Whether identification parade necessary*

CRIMINAL PROCEDURE: *Appeal - Appeal against conviction and sentence - Whether gap in prosecution's case existed - Whether sentence excessive - Whether appellate intervention warranted*

EVIDENCE: *Expert evidence - Signature - Whether appellant forged signatures - Whether specimen writings or signatures required for comparison - Whether trial court correctly accepted evidence of expert witness*

EVIDENCE: *Witness - Recalling of - Recalling of witness by prosecution - Whether trial court had right to refuse application to recall witness - Criminal Procedure Code, s. 173(l)(i)*

The appellant worked as a Pembantu Tadbir at the Kota Kinabalu Magistrate's Court and was responsible for the works which related to birth registration. The appellant was charged with three charges of corruptly receiving gratification under s. 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC') and three alternative charges for forging the signature of the Magistrate of Kota Kinabalu ('PW13') on three certified extract of birth certificates ('P5b', 'P6b' and 'P6c') under s. 468 of the Penal Code. The appellant pleaded not guilty to all three principal charges as well as the alternative charges. Analysis by the chemist showed that the purported signatures on the three birth certificates were not the signature of the Magistrate but were likely of the appellant's. The appellant received the gratifications of RM50 from one Maslina bt Abd Samad ('PW8') ('first charge'),

RM100 from one Hon Sun Wan ('PW11') and another RM100 from the same PW11 ('second and third charges') as a reward that there would be no necessity for PW8 and PW11 to go through a hearing in respect of the application for late birth certificates. For the first charge, the appellant was convicted and sentenced to two years' imprisonment and a fine of RM10,000 in default six months imprisonment. In respect of the second and third charges the appellant was sentenced to two years and six months imprisonment and a fine of RM10,000 in default six months imprisonment, respectively. All sentences were ordered to run consecutively. The appellant appealed against both conviction and sentence. The appellant contended that the evidence of PW8 and PW11 only showed that they had allegedly given money to the appellant and there was no evidence to prove that the appellant had received the money which was the main ingredient of the principal charges. The Sessions Court Judge had invoked the presumption under s. 50(1) of the MACC that once the prosecution had proved that money had been given or received, the burden of proof shifts to the accused to rebut the presumption on a balance of probabilities. The issues raised by the appellant during this appeal, *inter alia,* were: (i) that there was no specimen signature or handwriting of the appellant obtained for comparison by the expert ('PW1'); (ii) that the identification of the appellant by PW11 was unsatisfactory as there was no identification parade held; (iii) that there was a gap in the prosecution's case because PW8 had not testified that she had signed on a document of birth extract (P19a); (iv) that the appellant had no exclusive access to the unlocked cabinet and drawers since the appellant was not the only person who dealt with matters involving late birth registration; and (v) that the Sessions Court Judge failed to allow the prosecution witness to be recalled and to consider the evidence of the defence adequately.

Held (dismissing appeal; affirming decision of the Sessions Court):

(1) In the absence of any evidence that the money was rejected by the appellant when it was paid as demanded, the only reasonable and irresistible inference was that the appellant had received the money. Once it was proved that the money had been given or received by the accused, the presumption was that the money had been given and received corruptly as an

inducement or reward. The same interpretation applied to s. 50(1) of the MACC which was similar to the older provision under s. 14 of the Prevention of Corruption Act 1961. The appellant failed to rebut the presumption on a balance of probabilities. Therefore, the Sessions Court had not erred in law and in fact in concluding that the ingredient of the principal charges had been proved. (paras 9 & 21)

(2) There was no requirement in law that necessitated specimen writings or signature mimicking to be submitted for comparison or analysis by the expert. The comparison of the signatures merely showed that the documents were not genuine. When such documents with the forged signature of PW13 was used by the appellant, her intention to facilitate her demand for money was manifest. The Sessions Court Judge did not fall into error when he exercised his discretion in accepting the evidence of PW1. (paras 10 & 11)

(3) There was no necessity for an identification parade to be held when a witness could identify the perpetrator positively or without a doubt. PW11 had identified the appellant positively without any hesitation in court. Identification of an accused person in the dock during trial by a witness was considered an accepted process if the court was satisfied that the witness was able to do so without aid. An identification parade would have been a redundant process in this case. (para 13)

(4) The non-signing of P19(a) would not alter the fact that P5b had indeed been given to PW8 who testified affirmatively to that effect. In addition, being an PW8 being an outsider, could not be expected to know that she must sign on the birth extract when she was given the birth certificate of her child. The argument of the gap in the prosecutions case and the lack of evidence in this aspect did not vitiate the evidence of PW8. (para 15)

(5) The fact that others might have access to the documents or materials was insignificant in light of the clear evidence from PW8 and PW11 who had dealt with the appellant. The evidence of PW13 corroborated by the expert evidence that the signatures in the documents given to PW8 and PW11 did not belong to PW13 but probably written by the appellant

supported the fact that the appellant had manipulated the manner to demand payment for getting the matter done without the need of a formal hearing. (para 16)

(6) The trial court had absolute discretion to allow a witness to be recalled or otherwise. Such application must be based on good and valid grounds with the paramount consideration of the justice of the case. Hence, the trial court was entitled to refuse such application which could be construed as vexatious, delay or defeating the ends of justice under s. 173(l)(i) of the Criminal Procedure Code. (para 17)

(7) There was no valid ground to intervene with the decision of the Sessions Court as the findings were based on the facts, demeanour and credibility of PW8 and PW11 which the trial judge had the advantage of seeing and assessing. The integrity and public confidence in the court should be protected, therefore, a deterrent sentence was appropriate taking into consideration that the accused was an administrator in court. The fines were rightly imposed as prescribed by the law and the sentence of imprisonment was not manifestly excessive and had not violated the totality principle. (paras 24, 29 & 30)

Case(s) referred to:
Balakrishnan v. DPP [1968] 1 LNS 12 HC ***(refd)***
Che Omar Mohd Akhir v. PP [1999] 2 CLJ 780 CA ***(refd)***
Lee Kwai Heong & Anor v. PP [2006] 1 CLJ 1043 CA ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***
PP v. Abdul Hamid [1968] 1 LNS 98 HC ***(refd)***
PP v. Dato' Waad Mansor [2005] 1 CLJ 421 FC ***(refd)***
Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***
Seng Heng Electrical v. Chua Len Teng [1969] 1 LNS 168 FC ***(refd)***
Tan Thong Jin v. PP [2002] 3 CLJ 552 CA ***(refd)***
Thavanathan Balasubramaniam v. PP [1997] 3 CLJ 150 FC ***(refd)***
Zulkifli @ Sakun Ahmad Endin Chun lwn. PP [2012] 1 LNS 435 CA ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 173(1)(i), 425
Malaysian Anti-Corruption Commission Act 2009, ss. 16(a)(B), 24(1)(b), 50(1)
Penal Code, s. 468
Prevention of Corruption Act 1961, s. 14

Other source(s) referred to:
Concise Oxford English Dictionary, 11th edn, p 1199

For the appellant - Bobby Tan; M/s Tan & Co
For the respondent - Joyce Balsius; DPP

Reported by Sandra Gabriel

JUDGMENT

Chew Soo Ho J:

Introduction

[1] The appellant was charged with three charges of corruptly receiving gratification under s. 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) ("MACC Act 2009") with three alternative charges of forging the signature of the Magistrate of Kota Kinabalu Magistrate's Court on the certified extract of birth certificates under s. 468 of the Penal Code. The appellant pleaded not guilty to all three principal charges as well as the alternative charges.

[2] Trial was proceeded and at the end of the full trial, the appellant was found guilty and convicted of all three principal charges and was sentenced to the following:

First charge:	Two years imprisonment to run from 21 January 2013 and a fine of RM10,000 in default six months imprisonment;
Second charge:	Two years six months imprisonment and a fine of RM10,000 in default six months imprisonment; and
Third charge:	Two years six months imprisonment and fine of RM10,000 in default six months imprisonment.

[3] All the sentences are to run consecutively. The appellant appealed against both conviction and sentence.

A **The Appellant's Grounds Of Appeal**

[4] The appellant's grounds of appeal can be deduced as follows:

B (a) Ingredient of the charge that the appellant did receive the money is not proved;

(b) In relation to the falsified signature, there was no specimen signature nor handwriting of the appellant being obtained for comparison by the expert who also did not testify that the
C questioned signatures of the Magistrate were from the appellant or that they were contained in the buku daftar;

(c) Unsatisfactory identification of the appellant by PW11 as there was no identification parade held;

D (d) A gap in the prosecution's case in exh. P19(a) that PW8 had never testified that she had signed on this birth extract;

(e) No exclusive access to the unlocked cabinet and drawers since appellant was not the only person dealing with the late birth
E registration matter;

(f) Failure of the learned Sessions Judge to allow recalling of the prosecution witnesses and to consider the evidence of the defence adequately; and

F (g) The issue of sentence.

Brief Facts

[5] The appellant worked as a pembantu tadbir (W17) at the
G Kota Kinabalu Magistrate's Court at the time of the charges and was responsible for the work relating to the late birth registration at the said court. On the relevant dates of the charges while the appellant was in the discharge of her duties as pembantu tadbir, she had received RM50 from one Maslina bt Abd Said (PW8)
H (the first charge), RM100 from Hon Sun Wan (PW11) (the second charge) and another RM100 from the same PW11 (the third charge) as a reward in order that there was no necessity to go through a hearing in respect of the application for late birth registration of Siti Aini (the first charge) and in order to obtain the
I stamp and certification by the court on the birth certificates for

the late birth registration of Jennifer Hon and Hon Yi Mei (the second and third charges respectively). These respective sums of money were asked for by the appellant from PW8 and PW11 and they were duly given to the appellant. PW8 then received the endorsed birth certificate from which she made the identity card for her daughter. PW11 had similarly received both his daughters' birth certificates duly stamped. When PW11 went to the National Registration Department to make the application for his two daughters' citizenship, he was informed of problem with the two birth certificates and was advised to return to the court to clarify the matter which led to the discovery that all the three late birth registration and/or certification had never been registered and/or heard by the Magistrate. Analysis by the chemist showed that the purported signature of the Magistrate on these three birth certificates were most probably not the signature of the Magistrate Cindy Mc Juce but that they were most probably written by the appellant.

Findings Of Court

[6] On the principal contention by the appellant that evidence of PW8 and PW11 only showed that they had allegedly given money to the appellant and that there was no evidence to prove that the appellant had received the money which is the main ingredient of the principal charges, respondent submitted that the word "receive" means "be given, presented with, or paid" referring to *Concise Oxford English Dictionary* 11th edn., p. 1199 and therefore it connotes "received" when there was "be given". Respondent also relied on the presumption under s. 50(1) of the MACC Act 2009 in support.

[7] The fact as found by the learned Sessions Judge is that when PW8 went to the court for her daughter's late birth registration, she was asked to look for the appellant who was the officer handling the matter at the Kota Kinabalu Court; PW8 had met the appellant who informed PW8 that the hearing of PW8's daughter's application had yet to be fixed for hearing. Thereafter PW8 had been calling the appellant several times to find out the status and the appellant had subsequently asked PW8 to pay her RM50 so that the process of hearing could be dispensed with. On 15 December 2010, PW8 gave the money to the appellant in the court outside the corridor in front of the counter. When this sum

of money was paid, the appellant handed to PW8 her daughter's birth certificate (P5(b)) with the approval endorsement and certification allegedly made by the Magistrate. Similarly, evidence of PW11 showed that appellant told the former that for each birth certificate, it was RM100 and PW11 paid appellant RM200 when she delivered the two birth certificates (P6(b) and P6(c)) of PW11's daughters duly stamped. For both PW8 and PW11, they had also paid the actual fee of RM3 for each application for late birth registration.

[8] From this fact, the learned Sessions Judge has invoked the presumption under s. 50(1) of the MACC Act 2009 and the authorities of *Thavanathan Balasubramaniam v. PP* [1997] 3 CLJ 150; [1997] 2 MLJ 401 SC, *Balakrishnan v. DPP* [1968] 1 LNS 12; [1969] 2 MLJ 61 that once the prosecution had proved that money has been given or received, the burden of proof shifts to the accused to rebut the presumption on a balance of probabilities.

[9] I do not find the learned Sessions Judge has erred in law and/or in fact in concluding that this ingredient of the principal charges had been proved. The presumption under s. 50(1) of the MACC Act 2009 is wide enough to cover a giving which has been given which must be construed to have "received". Whether the appellant had received the money given or paid by PW8 and PW11 is a question of fact. In the fact as found by the learned Sessions Judge, the money paid by PW8 and PW11 were asked for by the appellant to do an act which would suggest to alleviate PW8's and PW11's problems and evidence of PW8 and PW11 is absolutely vivid that they paid the money directly to the appellant and no one else. I find no doubt that appellant had received those money paid even though PW8 and PW11 did not say or perhaps were not asked to say that appellant had received their money. Nevertheless, the fact is clear that in the absence of any evidence that the money were rejected by the appellant when they were paid as demanded by her, the only reasonable and irresistible inference is that appellant had "received" them. In *Thavanathan Balasubramaniam v. PP* (*supra*), the Supreme Court held *inter alia* that once it was proved that the money had been "given or received" by the accused, the presumption under s. 14 of the Prevention of Corruption Act 1961 ("PCA") arose that the money

had been "given and received" corruptly as an inducement or reward. The same interpretation should apply to s. 50(1) of the MACC Act 2009 which is similar to the old provision under s. 14 of the PCA. Thus, I do not find merit in appellant's contention both on facts and in law.

[10] On the grounds relating to the falsified signature of the learned Magistrate that the specimen signatures were not obtained from the appellant by the investigating officer for purpose of comparison by the expert witness, I find what is pertinent is for the expert or document examiner to be supplied with specimen handwriting or signature which are contemporaneous to the alleged forgery and not samples collected at a later stage which could have been written with much variance. From the evidence, contemporaneous specimen signatures of the learned Magistrate and the writings of the appellant from the records of the court were submitted to and analysed by the expert who had given his opinion which implicated the appellant. I do not find any requirement of law which necessitates specimen writings or signature mimicking the questioned handwritings or signature to be submitted for comparison or analysis by the expert. A forger would certainly know how to write or sign the new specimen at variance from the questioned handwritings or signature. Evidence of the document examiner from the Chemistry Department Malaysia (PW1) at pp. 15-35 together with her reports exhs. P11 and P12 are explicit. The learned Sessions Judge did not fall into error when he exercised his discretion rightly in accepting the evidence of PW1.

[11] In any event, the comparison of the signature in this case merely shows that the documents were not genuine documents and the intention of such forgery was to facilitate gratification as the forgery charges are only the alternative charges. PW13, the Magistrate whose signature was forged had testified that the questioned signature was not hers and this has been verified and certified by PW1, the document examiner that PW13 was most probably not the author of the said questioned signatures. When such document with the forged signature of PW13 was used by the appellant, her intention to facilitate her demand for money was manifest. The appellant should consider herself lucky that she was not charged with forgery as the principal charges.

[12] Having evaluated the decision in this respect of the learned Sessions Judge and having considered the evidence particularly of PW1 and PW13, I do not find that the learned Sessions Judge has erred in rejecting this contention by the appellant.

[13] Pertaining to the identification of the appellant where no identification parade was held, the appellant submitted such identification parade ought to be conducted and PW11 called to identify the appellant. I would think that there is absolutely no necessity for an identification parade to be held when a witness could identify the perpetrator of a crime positively or without doubt. The identification of the appellant by PW11 was not a flicking identification. PW11 had met the appellant, talked to, waited for the appellant for 20 minutes and paid the demand money directly to PW11 who handed PW11 the said documents. PW11 had identified the appellant in court positively without hesitation. Identification of an accused person in the dock during trial in court by a witness is considered an accepted process if the court is satisfied that the witness is able to do so without aid as in the cited case of *Zulkifli @ Sakun Ahmad Endin Chun lwn. PP* [2012] 1 LNS 435; [2013] 1 MLJ 733 CA. Identification parade would in the circumstances of this case be a redundant process. I find no merit in this ground.

[14] As to the gap alleged and submitted by the appellant referring to exh. P19(a) which is a document of birth extract wherein PW8 had not testified that she had signed on it, the respondent submitted that the fact that PW8 did not testify of having signed on P19(a) will not affect the case against the appellant because what was undisputed is that it was the appellant who had given the birth certificate P5b to PW8.

[15] From the evidence, after PW8 had received P5b from the appellant, she had gone to the National Registration Department to apply for identity card for her daughter. That would have refuted the appellant's allegation that it was for school registration. The appellant had not or could not deny that P5b was given to PW8. Hence, the non-signing on the birth extract would not alter the fact that P5b had indeed been given to PW8 who testified affirmatively to that effect. In addition, one cannot expect PW8 being an outsider to know that she must sign on the birth extract when she was given the birth certificate of her child. I do not agree that the lack of evidence in this aspect will vitiate the evidence of PW8.

[16] The appellant contended that she was not the only person dealing with the late birth registration and that others could have access to the unlocked cabinet and drawers. I find this aspect of the evidence to have been duly considered by the learned Sessions Judge as submitted by the respondent which is a finding of fact. The fact that others might have access to the documents or materials is insignificant in the light of clear evidence from PW8 and PW11 who were the direct witnesses who dealt with the appellant and no one else. The evidence of the learned Magistrate (PW13) corroborated by the expert evidence of the document examiner (PW1) that the signatures therein the documents given to PW8 and PW11 were not hers but most probably written by the appellant supported the fact that the appellant had manipulated in that manner to demand payment for getting the matter done without the need of a formal hearing. I do not find the learned Sessions Judge to have erred in rejecting this ground.

[17] The appellant had submitted that the learned Sessions Judge had erred in not allowing the recalling of PW1, PW8 and PW12, at the end of the prosecution's case. Learned Deputy for the respondent submitted three provisions of the law where the court need to consider in such application namely, s. 173(1)(i) of the Criminal Procedure Code ("CPC") which provides that the court shall not issue process for calling or recalling of any witnesses if the application is found to be vexatious, delay or for defeating the ends of justice; secondly, s. 425 of the CPC which requires counsel to enlighten the court that the said evidence is essential to the just decision of the case; and thirdly, the court should not call any witnesses at the close of the case of any party unless there is strong and valid reason as held in *PP v. Abdul Hamid* [1968] 1 LNS 98; [1969] 1 MLJ 53. I do not doubt the requirements of the law. I am of the view that whether a witness is allowed to be recalled or otherwise is the absolute discretion of the trial court. Such application must certainly be based on good and valid grounds with the paramount consideration that it is the justice of the case which the court should grant or refuse such application. Such recalling is certainly not for further cross-examination of the witness or witnesses for what the applicant has failed to or left out or that the applicant has new thought to put forward but on essential evidence which will lead to a just decision of the court. The court should certainly not countenance

vexatious, delay or measures calculated to defeat justice. Hence, if the application is not supported with valid and proper ground, the trial court would have no ground to consider and to grant the application and would be entitled to refuse such application which can be construed as vexatious, delay or defeating the ends of justice under s. 173(1)(i) of the CPC.

[18] I would agree with the learned DPP's submissions which justified the refusal of the recalling of the witnesses on matters where evidence had already been led and cross-examination had ended. To reopen such evidence requires strong grounds. I reject this point of submission even if it had been canvassed before the learned trial Sessions Judge.

[19] Referring to the consideration by the learned Sessions Judge on the evidence of the appellant that there was occasion where the documentation was lost wherein the learned Sessions Judge did not accept the appellant's evidence because she should have lodged a police report but did not, I think the learned Sessions Judge is entitled to come to that finding in the absence of a police report particularly that the documentation was public documents or records kept in the court and if it was missing, it is only conceivable that a police report should be lodged. I do not find any error in the learned Sessions Judge's finding in this aspect.

[20] The appellant also contended that the defence of the appellant is probable that she might not be on duty at the material time of the offences when PW11 was present in the court. I do not find any wrong findings as the documents P6B and P6C clearly show appellant's writing on the date of the crime on 15 June 2010 indicating that she was working on that day. There was no cross-examination on the Registrar in charge of the administration (PW12) and the Magistrate (PW13) that the appellant was not working or on duty that day and required them to produce the punch card or attendance register. On a balance of probabilities, it was improbable to contend that appellant was not working or on duty that day.

[21] Having examined the learned Sessions Judge's decision, I have no doubt that he has so decided that the defence of the appellant had failed to rebut the presumption under s. 50(1) of the MACC Act 2009 on a balance of probabilities although he has not said in clear words this standard of proof. Nevertheless,

he had stated the correct laws that the burden of proof shifts to the defence to rebut such presumption on the standard which is on a balance of probabilities; see *Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311. Even if he is to err, he has erred in favour of the appellant by using a lower standard which is raising a reasonable doubt. No injustice has occasioned to justify intervention by this court as the totality of the evidence does not show that the appellant had succeeded in raising a reasonable doubt; *Mat v. PP* [1963] 1 LNS 82.

[22] From the totality of the evidence, I find that the decision of the learned Session's Judge is well grounded on findings of facts and on the correct principles of law that he had applied. In *Che Omar Mohd Akhir v. PP* [1999] 2 CLJ 780, His Lordship Haidar Mohd Noor JCA said at p. 786:

> As is in this case, where the decision of the trial judge is based on credibility of witnesses, the appellate court must be convinced that the decision was plainly wrong and against the weight of the evidence. We can do no better than to quote a passage from *Dato Mokhtar bin Hashim v. Public Prosecutor* [1983] 2 MLJ 232 where at p. 275, our Federal Court said:
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> > ... The credibility of a witness is primarily a matter for the trial judge. There is a homogeneous concatenation of authorities on this principle and we refer to the *locus classicus* on this aspect in a passage in the judgment of Lord Thankerton in *Watt or Thomas v. Thomas* [1947] AC 484, 487. The Privy Council said in *Caldeira v. Gray* [1936] MLJ 137, 138 that the functions of an appellate court, when dealing with a question of fact, and a question of fact in which questions of credibility are involved, are limited in their character and scope, and that in an appeal from a decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, an appellate court must in order to reverse, not merely entertain doubts whether the decision below is right but must be convinced that it is wrong.

[23] In *Tan Thong Jin v. PP* [2002] 3 CLJ 552, the Court of Appeal held, *inter alia*, that:

> [1] An appellate court will not readily interfere with the findings of fact arrived at by the trial court to which the law entrusts the primary task of evaluation of the evidence. But it is the duty of the appellate court to intervene in a case where the

A trial court has so fundamentally misdirected itself, that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion.

See also: *Lee Kwai Heong & Anor v. PP* [2006] 1 CLJ 1043 CA.

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[24] I find no valid grounds to intervene with the learned Sessions Judge's findings particularly his finding based on the facts, the demeanour and credibility of PW8 and PW11 which the trial judge has the advantage of seeing and assessing. In addition, I C also do not find any non-direction or misdirection by the learned Sessions Judge which occasioned a serious miscarriage of justice to warrant an intervention; see *Seng Heng Electrical v. Chua Len Teng* [1969] 1 LNS 168; [1970] 1 MLJ 67 FC. I shall not, therefore, disturb the decision of the learned Sessions Judge in D finding the appellant guilty of all the three principal charges.

[25] On the question of sentence, it was submitted basically for the appellant that the sentence is too harsh and excessive as the amount of gratification involved is very small. Learned DPP has E submitted at length on the principle of law on sentencing of cases involving corruption which must necessarily attract imprisonment sentence (*PP v. Dato' Waad Mansor* [2005] 1 CLJ 421), and on the principle of law governing the imposition of concurrent or consecutive sentences which must depend on particular F circumstances of the case and where consecutive sentences are necessary to discourage the type of criminal conduct punished (*Sau Soo Kim v. PP* [1975] 1 LNS 158; [1975] 2 MLJ 134), *inter alia*.

[26] The learned Sessions Judge in convicting the appellant and in passing sentence, has taken into consideration the fact that the G appellant was a first offender having no criminal records, a single mother and the effect of conviction that may lead the appellant to lose her job on the one hand and public interest that corruption is a serious crime where deterrent punishment should be called for on the other hand, balancing both, the learned H Sessions Judge imposed the sentence as above.

[27] The appellant submitted that the fine imposed is excessive. The fine of RM10,000 for the offence under s. 16 of the MACC Act 2009 punishable under s. 24 of the same Act is indeed the I minimum fine prescribed by law. Section 24(1)(b) of the MACC Act 2009 provides that:

(b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

[28] The fine is five times the amount if the gratification or RM10,000 whichever is the higher. In the instant case, RM10,000 is higher than five times of the gratification in each of the principal charges and is rightly imposed by the learned Sessions Judge.

[29] On the sentence of imprisonment, the question is whether the sentences in accumulation are manifestly excessive or whether they violate the totality principle. Learned DPP submitted that for the second and third charge, they can be construed as one single transaction as the whole transaction was done at the same time and the sentences in normal circumstances should run concurrently but on the facts and circumstances of this case, the learned Sessions Judge has found that the integrity and the public confidence in the court should be protected that a deterrent sentence was appropriate taking into consideration that the acts of the appellant as pembantu tadbir working in the court had breached the trust reposed on her as a public servant so much so that the public may have the wrong impression on the court that it is corrupted thereby losing confidence in the court in the dispensation of justice. This perception is indeed very damaging to the court. I must agree that the sanctity of the court must be guarded at all costs and all the most that it should not be used as a place to perpetrate crime by public servants working in the court. Corruption is a serious crime; whether it is in the sum of RM50 or RM100 or any other sums; it matters not whether the amount is small as the very nature of the offence and its seriousness would make no difference. Public interest does demand a deterrent sentence not only to deter other offenders but principally to safeguard public confidence in the court. The case of *Sau Soo Kim v. PP* (*supra*) has laid down the principles where the court can depart from the totality principle which the learned Sessions Judge has followed in imposing the sentences. I do not find any error in law in the sentencing.

[30] Having perused the records of appeal and having considered the submissions by both parties herein, I do not find any valid ground to intervene in this appeal both in the finding of guilt and conviction as well as the sentence of the learned Sessions Judge. I therefore dismiss this appeal and affirm the learned Sessions Judge's order of conviction and sentence as above.